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IN THE
Supreme Court of the United States
October Term, 1944

No. 320

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND, et al,
PETITIONERS,
vs.
SOUTHWEST TAMPA STORM SEWER DRAINAGE DISTRICT, et al,
RESPONDENTS

BRIEF FOR SOUTHWEST TAMPA STORM SEWER DRAINAGE DISTRICT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INDEX

pages

Statement of the Case 1-6

Argument—Petitioners' Points Refuted:-

Point I: No Suit Against the State Involved 6-10

Point II: State's Title to Murphy Act Lands Vested and Continued Subject to Liens for Drainage Taxes 10-11

Point III: Lien for State and County Taxes Involved Not Superior to Lien for Drainage Taxes 11-13

Quotation from McAnally v. Little River Drainage District, et al, 325 Mo. 348, 28 S.W. (2d) 650 14

Excerpt from Sec. 2, Chapter 12,040, Laws of Florida, Acts of 1927, later Section 1472, Compiled General Laws of Florida of 1927, Sec. 298.41 Florida Statutes, 1941 18

TABLE OF CASES

A.C.L. RR. Co., v. United States, 132 Fed. (2d) 959, (5 CCA) 8

Carlile v. Melbourne-Tillman Drainage District, et al, 143, Fla. 355, 196 So. 687 10

Chappell v. United States, 160 U.S. 499, 40 L. Ed. 510 7

Hessel v. A. Smith & Co., 15 Fed. Supp. 953 8

Ideal Farms Drainage District, et al, v. Certain Lands (Unreported, opinion filed Aug. 1, 1944, Fla.) 12

Kohl, et al, v. United States, 91 U. S. 367, 23 L. Ed. 449 ..... 6, 8

McAnally v. Little River Drainage District, et al, 325 Mo. 348, 28 S.W. (2d) 650 ..... 12, 14

Prince Hall Masonic Bldg. Assn. v. City of Jacksonville, 149 Fla. 109, 6 So. (2d) 250 11

pages

State Board of Escheats v. Klump, et al, 38 Fed. (2d) 625 (6 CCA) 9

State ex rel Campbell v. Sloan, 135 Fla. 179, 184 So. 781 12

State of Minn. v. United States, 125 Fed. (2d) 636 (8 CCA) 6, 8

State of Okla. ex rel Phillips v. Guy F. Atkins Co., et al, 313 U.S. 508, 85 L. Ed. 1487 6

State v. King, et al, 76 W.Va. Rep. 10, 84 S.E. 902 9

Stockton etc., v. Baltimore & N.Y. RR. Co., et al, 32 Fed. 9 7

United States v. 4450.72 Acres of Land, et al, 27 Fed. Supp. 167 6

United States v. 47.21 Acres of Land, 48 Fed. Supp. 73 8

United States v. 80 Acres of Land, 26 Fed. Supp. 315 8

United States v. 72 Acres of Land, 37 Fed. Supp. 297 8

United States v. 53.25 Acres of Land, 47 Fed. Supp. 887 8

TEXT

29 C.J.S., page 803 7

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BRIEF FOR SOUTHWEST TAMPA STORM SEWER DRAINAGE DISTRICT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE

On October 9, 1939, the United States, in the exercise of its power to provide for the national defense, acquired the fee simple title to 5766.82 acres of land situate near the City of Tampa in the Southern District of Florida for an Army Air Base, through the filing in the District Court of its petition for condemnation accompanied by a declaration of taking by the Secretary of War and the deposit in the registry of the Court of the estimated compensation therefor in the amount of $173,004.60. The proceedings were had and conducted in conformity with the Act of Congress, 46 Stat. 1421, 40 U.S.C.A., 258a. The amount of compensation was determined by the verdict of a jury rendered January 23, 1942, and the

judgment entered thereon on May 29, 1942, wherein the amount of compensation was fixed separately for each of the several portions into which the whole tract was divided, designated by appraisal numbers. The judgment provided, among other things, that the compensation awarded should—

> "be disbursed by the Clerk of this Court pursuant to and in accordance with such orders as this Court shall make herein for the disbursement of the same after this Court has determined to whom the said sum of money in the registry of this Court, or any part thereof shall be disbursed for the payment of the respective awards after the payment out of said deposit of any lawful liens that the Court may determine were outstanding against each of the said several parcels of land on the date of the taking of said lands by the United States, to wit, October 9, 1939." (Tr. 101.)

The aggregate amount of the compensation so allowed for the acreage taken was $157,701.25, and so it was that the money deposited in the registry of the Court and which accompanied the declaration of taking constituted a *res in custodia legis* to provide the compensation allowed for the lands taken, which it was both the right and the duty of the District Court to award and direct paid over to whomsoever was found rightfully entitled thereto, in the doing of which the Court exercised an integral element of its jurisdiction of the proceeding in eminent domain.

A portion of the lands condemned lay within the boundaries of Southwest Tampa Storm Sewer Drainage District created under and to which were applicable the General Drainage Laws of the State of Florida originally found in Chapter 6458 of the Acts of 1913 and subsequently in Sections 1098 to 1150, Revised General Statutes, 1920, Sections 1451 to 1507, Compiled General

Laws, 1927, Sections 298.01-298.56, Florida Statutes, 1941.

The Drainage District, its Board of Supervisors and Receiver, by their original and amended answer to the Government's condemnation petition (Tr. 25, 57) and their subsequent petition for distribution (Tr. 79), asserted liens in favor of the District against certain therein described parcels of the condemned lands at the time of taking for drainage taxes, and right to payment and satisfaction thereof from the compensation awarded therefor. Such taxes were in part for the purpose of maintenance and in part to meet the principal and interest of the outstanding bonds of the District.

The Reconstruction Finance Corporation, as the holder of the greater portion of the outstanding bonds of the District and the interest in arrears thereon, by its answer to the Government's condemnation petition, alleged its ownership of said bonds, the levy of a tax for the payment of the bond issues of the District, and the levy and assessment by the District on its annual tax rolls of installments of such total tax, and that said respondent, as the owner of said bonds, held a lien against certain parcels of the condemned lands superior in dignity to all other liens except those for State and County taxes and of equal dignity therewith to the amount of such unpaid taxes, and embodied a prayer that from the compensation allowed for each such parcel of land all such unpaid drainage taxes should be deducted and paid over in reduction of the bonded indebtedness due by the Drainage District.

By answer filed on August 5, 1941, by the Trustees of the Internal Improvement Fund of the State of Florida, it was asserted that said State held title to specified

portions of the condemned land which had vested in the State pursuant to Section 9 of the Murphy Act (Chapter 18,296, Laws of Florida, Acts of 1937), and claim was made to the entire sums awarded for the taking thereof (Tr. 42). These lands were those against which there were outstanding tax sale certificates for State and County taxes two or more years old at the time of the taking effect of the Murphy Act (June 9, 1937), and not redeemed at the end of two years thereafter (June 9, 1939), at which later date the Act declared title to such lands to vest absolutely in the State of Florida.

On August 24, 1942, an amended claim was filed for unpaid State and County taxes against certain of the condemned lands the title to which had not vested in the State of Florida (Tr. 105-111).

On September 18, 1942, a decree was entered distributing and ordering payment of the compensation awarded for each of those parcels described therein, the title to which had vested in the State under the Murphy Act, which compensation was ordered applied first to the discharge of the liens therein found to exist against such tract in favor of Southwest Tampa Storm Sewer Drainage District for drainage taxes annually levied and assessed by it prior to the time of taking, and the residue to be paid to the Trustees of the Internal Improvement Fund of Florida (Tr. 115-127).

On September 18, 1942, a decree was entered distributing and ordering payment of the compensation awarded for each of those parcels described therein, the title to which had not vested in the State under the Murphy Act, which compensation as to each tract was ordered applied to the payment of the amounts for which liens thereon existed at the time of taking for

unpaid State and County taxes and drainage taxes, and where the amount of such compensation was inadequate to satisfy in full the amount of said liens that the compensation should be prorated and applied to the satisfaction of said liens without preference (Tr. 112-115). It is important to keep in mind that the claim filed for these State and County taxes disclosed that they were all levied and assessed for one or more of the years 1935 or subsequent years, and therefore that these taxes were levied and assessed *subsequently* to the enactment of Chapter 12,040, Laws of Florida, 1927, by Section 2 of which act Section 1119 of Revised General Statutes of Florida (which subsequently became Section 1472, Compiled General Laws, and Section 298.41 Florida Statutes, 1941) was amended so as to provide that drainage taxes should constitute a lien of equal dignity with the liens for State and County taxes.

The drainage taxes for which liens were allowed in these two decress of distribution were restricted to those levied and assessed upon the annual tax rolls of the District prior to the time of taking, with accrued penalties for the nonpayment thereof, — the Court having theretofore by its order of April 8, 1942, denied the District any lien for or right to payment of the unextended portion of the total tax levied for the payment of its bond issues. (Tr. 86-88). This order became and in effect was the final judgment of the District Court disallowing that portion of the Drainage District's claim. No appeal has ever been taken therefrom and therefore this ruling has never been and is not now subject to appellate review.

The two decrees of September 18, 1942, above mentioned, upon an appeal taken by the petitioners, were affirmed on May 8, 1944, by the Circuit Court of Ap-

peals for the Fifth Circuit, and it is of these two decrees that the petitioners complain and seek to obtain a review by this Court.

It is at once apparent that no one of the reasons for review enumerated in Rule 38 of this Court is present; that the questions sought to be presented are of local interest only and controlled by the laws of the State of Florida; and that the Circuit Court of Appeals found these two distribution decrees to be in conformity therewith.

ARGUMENT

The contention advanced under each of Points I, II and III in petitioners' brief is without merit.

Point I.

It is too well settled to admit now of any doubt that the United States in the exercise of one of its constitutional powers may resort to a proceeding in eminent domain to acquire lands required for its use, including lands owned by one of the States, and that no State can impose any obstacle thereto, and that a District Court of the United States has jurisdiction of such proceeding.

> *State of Okla., ex rel Phillips* v. *Guy F. Atkins Co., et al,* 313 U. S. 508, 85 L. Ed. 1487.
>
> *Kohl et al* v. *United States,* 91 U. S. 367, 23 L. Ed. 449.
>
> *State of Minn.* v. *United States,* 125 Fed. (2d) 636 (8 CCA).
>
> *United States* v. *4450.72 Acres of Land, et al,* 27 Fed. Supp. 167.

Stockton etc., v. *Baltimore & N. Y. RR. Co., et al*, 32 Fed 9.

Chappell v. *United States*, 160 U. S. 499, 40 L. Ed. 510.

29 C.J.S., page 803.

"It has not been seriously contended during the argument that the United States Government is without power to appropriate lands or other property within the States for its own uses, and to enable it to perform its proper functions. Such an authority is essential to its independent existence and perpetuity. These cannot be preserved if the obstinacy of a private person, *or if any other authority*, can prevent the acquisition of the means or instruments by which alone governmental functions can be performed. The powers vested by the Constitution in the General Government demand for their exercise the acquisition of lands in all the States. These are needed for forts, armories and arsenals, for navy yards and light-houses, for custom-houses, post-offices, and court-houses, and for other public uses. If the right to acquire property for such uses may be made a barren right by the unwillingness of property holders to sell, or by the action of a State prohibiting a sale to the Federal Government, the constitutional grants of power may be rendered nugatory, and the Government is dependent for its practical existence upon the will of a State, or even upon that of a private citizen. This cannot be . . . . . .

" 'So far as the General Government may deem it important to appropriate lands or other property for its own purposes, and to enable it to perform its functions — as must sometimes be necessary in the case of forts, light-houses and military posts or roads, and other conveniences and necessities of government — the General Government may exercise the authority as well within the States as within the territory under its exclusive jurisdiction; and its right to do so may be supported by the same reasons which sup-

port the right in any case; that is to say, the absolute necessity that the means in the Government for performing its functions and perpetuating its existence should not be liable to be controlled or defeated by the want of consent of private parties or *of any other authority.*' . . . . . .

"If the United States have the power, it must be complete in itself. It can neither be enlarged nor diminished by a State. Nor can any State prescribe the manner in which it must be exercised. The consent of a State can never be a condition precedent to its enjoyment." (Italics ours)

Kohl et al v. *United States, supra.*

A proceeding in condemnation is in rem against the land. *State of Minnesota* v. *United States, supra.* The Statute under which the proceeding in the instant case was conducted is constitutional and satisfies all such requirements.

A.C.L. RR. Co., v. *United States,* 132 Fed. (2d) 959 (5 CCA).

United States v. *47.21 Acres of Land,* 48 Fed. Supp. 73.

United States v. *80 Acres of Land,* 26 Fed. Supp. 315.

United States v. *72 Acres of Land,* 37 Fed. Supp. 297.

Hessel v. *A. Smith & Co.,* 15 Fed. Supp. 953.

The jurisdiction of the Court extends to the making of such orders, judgments and decrees as may be necessary or appropriate for the distribution of the compensation deposited in the registry of the Court.

United States v. *53.25 Acres of Land,* 47 Fed. Supp. 887.

Where a fund is not in the hands of a State but in the hands of a court which has the right and power to award the same to those to whom it rightfully belongs, and the fund has never been disposed of in any manner by any order of the court, claims interposed thereto and the distribution thereof in accordance with the respective rights of the claimants neither involve nor constitute any suit against a State.

State v. *King, et al,* 76 W.Va. Rep. 10, 84 S.E. 902.

In *State Board of Escheats* v. *Klump, et al,* 38 Fed. (2d) 625 (6 CCA), a suit by the legal heirs of decedent against the State Board of Escheats of Michigan to recover property to which the plaintiffs were entitled but which was in the possession of such Board, was held not to constitute a suit against the State of Michigan,—it being found that such Board in fact constituted officers who held the property as Trustees under the duty to restore the same or the proceeds thereof to its rightful owners.

In the instant case, the compensation allowed for the lands taken by the United States was a *res in custodia legis* over which the jurisdiction of the Court extended with the duty of making distribution thereof to those who were made to appear rightfully entitled thereto. In the exercise of this jurisdiction, in no sense was any suit against the State of Florida involved.

If the contention advanced on behalf of petitioners were accepted, the inevitable consequence which would flow therefrom would be either (1) that the fund representing compensation must remain undistributed in the registry of the court *ad infinitum,* or (2) that the State of Florida would be entitled to a fund irrespective

of the interest which others might have therein and thereto.

Point II.

The contention insisted upon by the petitioners hereunder has been refuted by the Supreme Court of the State of Florida in *Carlile* v. *Melbourne-Tillman Drainage District, et al,* 143 Fla. 355, 196 So. 687, as follows:

> "The title which vests in the State under statute vesting in state fee-simple title to all lands certificated to state for nonpayment of taxes is subject to the lien of drainage district taxes. Acts 1937, c. 18296." (Headnote).
>
> ". . . . . .
>
> "PER CURIAM.
>
> "The only question involved in this appeal is, 'Did title to land subject to Murphy Act in Drainage District go over to the State subject to and burdened with drainage district taxes?'
>
> "Stated otherwise, the question is: Did the State of Florida take title to lands under the provisions of the Murphy Act, Acts 1937, c. 18296, free and clear of the lien created by the levy and assessment of drainage district taxes delinquent prior to title vesting in the State?
>
> "The Circuit Court in effect held that the delinquent drainage tax remained a lien against the property on which the same was levied.
>
> "The decree is affirmed on authority of the opinion and judgment of this Court in the case of Bice v. City of Haines City, 195 So. 919, filed May 17, 1940.
>
> "So ordered.
>
> "TERRELL, C.J., and WHITFIELD, BROWN, BUFORD, CHAPMAN AND THOMAS, J.J., Concur."

The Supreme Court of Florida, with equal clarity and emphasis, has held that the title which vested in the State under the provisions of the Murphy Act on June 9, 1939, was the fee simple title and thereafter continued to be the fee simple title, and the interest of the State could not be treated as a prolongation or continuation of the tax claims or tax liens which existed before and brought about the vesting in the State of the title in consequence of nonpayment thereof.

In *Prince Hall Masonic Building Association* v. *City of Jacksonville,* 149 Fla. 109, 6 So. (2d) 250, it was declared and held by the majority of the Court as follows:

> "The effect of Chapter 18,296, effective June 9, 1937, is to *vest* in the State of Florida on *June 9, 1939*, 'the fee simple title' to all lands, against which there remains outstanding State tax certificates held by the State that on *June 9, 1937, were more than two years old,* discharged of any right of redemption, thereby merging the State's tax liens into a legal title without a right of redemption."
>
> (On rehearing, by Justice Whitfield, pages 255-6).

Point III.

The contention hereunder advanced by the petitioners is untenable. By Statute in force at the time the United States took title to the condemned lands (Sec. 1472 Compiled General Laws, subsequently Sec. 298.41 Florida Statutes, 1941), which was enacted by Section 2 of Chapter 12,040, Laws of Florida, 1927, drainage taxes were constituted a lien of equal dignity with the liens for State and County taxes. As heretofore pointed out, the unpaid State and County taxes against the lands involved in the distribution decree were levied and

assessed for one or more of the years 1935 or subsequent years and therefore subsequently to the enactment last referred to.

The effectiveness of such legislation has been recognized by the Supreme Court of Florida in *State ex rel Campbell* v. *Sloan,* 135 Fla. 179, 184 So. 781, wherein, referring to liens for State and County taxes and liens for drainage taxes, it was said:

> "Each of the liens is made by law of equal dignity."

and in *Ideal Farms Drainage District, et al,* v. *Certain Lands,* unreported, in the opinion upon rehearing filed August 1, 1944, Section 298.41, Florida Statutes, 1941, was approvingly quoted and given effect.

The District Court, in denying the Drainage District a lien at the time of taking for that portion of the total tax levied for the payment of its bond issues which had not previously to condemnation been levied and assessed upon its annual tax rolls, followed the holding of the Supreme Court of the State of Missouri in *McAnally* v. *Little River Drainage District, et al,* 325 Mo. 348, 28 S.W. (2d) 650. The General Drainage Law enacted in Florida by Chapter 6458 of the Acts of 1913, is very nearly the same as the law enacted in the State of Missouri, found in Missouri R. S. 1919, Sec. 4378, et seq. In the case last cited, it was held that a lien did not exist and accrue in favor of the District for drainage taxes until such time as an annual assessment was determined upon and levied. The provisions of the Missouri statute and those of the Florida law are so similar and the case last cited so persuasive that a quotation at length from that opinion is included in the appendix hereto, where we have inserted in brackets the section of the Florida law

corresponding to that of the Missouri statute referred to in the opinion.

CONCLUSION

Respondent opposes the issuance of the writ applied for on the ground that no adequate and sufficient reason for the allowance thereof is made to appear, and that the judgment of which review is sought was and is manifestly correct.

Respectfully submitted,

W. F. HIMES

Counsel for said Respondent.